

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

OLIVIA Y., *et al.*

PLAINTIFFS

v.

CIVIL ACTION NO. 3:04CV251LN

HALEY BARBOUR, as Governor of the State of Mississippi, *et al.*

DEFENDANTS

ORDER

This matter came before the Court on the Plaintiffs' Unopposed Motion for Approval of Settlement Regarding Plaintiffs' Attorneys' Fees and Order of Notice to the Class. The Court having reviewed the Unopposed Motion and the agreed-upon Notice to the Class required by Federal Rule of Civil Procedure 23(h), the Motion is, for good cause, **GRANTED** in part. The Court rules, orders, and directs as follows:

1. **Notice.** On or before May 30, 2008, Defendants shall, at their sole expense, take the following steps to notify Class members of the proposed settlement:

- (a) Defendants shall prepare and mail true and correct copies of the Notice of Proposed Fees Settlement in *Olivia Y., et al. v. Barbour, et al.*, attached hereto ("Notice to Class"), postage prepaid, by first class mail to all of the following persons/locations, with an accompanying letter signed by the Department of Human Services ("DHS") Executive Director that gives notice of the settlement and directs that the Notice to Class be prominently and immediately posted in the location(s) in which it is most

likely to be seen by foster children and their legal representatives, and that the notice remain posted until June 16, 2008:

- i) Each Division of Family and Children's Services ("DFCS") county office, regional office, and state office;
 - ii) Each group home, congregate living facility, institution, and facility in which children in DFCS custody are placed;
 - iii) Each agency with which DFCS contracts for the provision of foster care services and/or other services for Class members;
 - iv) The judges and clerks of each Youth Court in the state of Mississippi;
 - v) The judges and clerks of each Chancery Court in the state of Mississippi with jurisdiction over custody, placement, or parental rights with respect to Class members;
 - vi) Each person who serves as a Guardian Ad Litem with respect to any Class member;
 - vii) Each person who has been approved as of the date class notice issues to serve as a foster parent, putative adoptive parent, or legal guardian, or to otherwise act *in loco parentis* for any Class member; and
 - viii) Each Class member who has attained or will attain the age of fourteen (14) years on or before the date class notice issues.
- (b) Defendants shall prominently post this Order and the Notice to Class on the Mississippi DHS website and shall maintain that posting until further order from the Court.

(c) Defendants will file with the Court on or before June 6, 2008, an affidavit certifying compliance with the notice requirements of this Order.

2. **Objections.** Objections by Class members to the proposed settlement regarding Plaintiffs' attorneys' fees will be considered if filed in writing with the Clerk of the United States District Court for the Southern District of Mississippi, James O. Eastland Courthouse, 245 East Capitol Street, Jackson, Mississippi, on or before June 16, 2008.

3. **Responses.** Counsel for the Class and for Defendants will have until June 23, 2008, to file responses to any objections filed by Class members and to provide other information, as appropriate, bearing on whether or not the settlement should be approved pursuant to Rule 23(h).

So **ORDERED** this 9th day of May, 2008.

/s/Tom S. Lee

United States District Court Judge

NOTICE OF PROPOSED FEES SETTLEMENT

PLEASE TAKE NOTICE:

TO ALL CHILDREN WHO ARE OR WILL BE IN THE CUSTODY OF MISSISSIPPI'S DEPARTMENT OF HUMAN SERVICES' (DHS) DIVISION OF FAMILY AND CHILDREN'S SERVICES (DFCS):

I. Background Of The Case

This notice concerns a proposed settlement of Plaintiffs' claim for attorneys' fees in the lawsuit known as *Olivia Y., et al. v. Barbour, et al.* **If you are one of the children described above, or if you are the legal representative of one or more of these children, then you should read this notice.**

Olivia Y. was filed in March 2004 in the United States District Court for the Southern District of Mississippi, Jackson Division, against the Governor of Mississippi, the Executive Director of DHS, and the Director of DHS's Division of Family and Children's Services, all in their official capacities (together they are called the "Defendants"). This case alleged that Mississippi's foster care system was failing to adequately protect children in its custody and provide necessary services in violation of their federal constitutional rights. This lawsuit sought only court-ordered changes in the system; money damages were never at issue.

Plaintiffs and Defendants negotiated a proposed settlement as to liability that was approved by the Court on May 17, 2007, after notice and a hearing. The parties then negotiated a remedial order that was approved by the Court on January 4, 2008, after notice and a hearing. The parties have now sought to have the Court approve their settlement of Plaintiffs' claims for attorneys' fees and expenses as the prevailing party in this civil rights action as described below. **You have the right to review the Unopposed Motion for Approval of Settlement Regarding Plaintiffs' Attorneys' Fees if you choose. You also have the right to tell the judge what you think before the judge decides whether to approve the requested fee award.**

II. Request For Payment Of Attorneys' Fees

Pursuant to applicable legal authorities, Plaintiffs' attorneys have requested payment of their fees and expenses for legal services provided to the Plaintiff Class from 2002 through January 4, 2008. Plaintiffs' attorneys supplied detailed billing records to Defendants in support of that request for 28,289.14 hours in attorney and paralegal time and over \$300,000 in expenses. Defendants' counsel reviewed those billing records and disputed various billings and the applicable rates. After further review and discussion, attorneys for the parties agreed to payment by the Defendants of the compromise amount of \$4,863,557.50 (\$4,540,830.43 in fees; \$322,727.07 in expenses) in full and complete satisfaction of all Plaintiffs' attorneys' fees and expenses incurred in connection with this lawsuit from 2002 through January 4, 2008.

Class members or their legal representatives who have questions about this Notice may contact Attorney Shirim Nothenberg. Attorney Nothenberg represents the Class and works for Children's Rights. Her toll-free telephone number is (888) 283-2210.

You may also review the materials that have been filed with the Court in this case, except those filed under seal, by going to the Office of the Clerk of the United States District Court for the Southern District of Mississippi (Jackson Division) at the James O. Eastland United States Courthouse, 245 Capitol Street, Jackson, Mississippi. The Clerk's Office is open on business days from 9:00 a.m. to 4:00 p.m. To review materials in the public record in the *Olivia Y.* case, refer to Civil Action Number 3:04CV251LN.

III. Opportunity To Comment About The Unopposed Motion For Approval of Settlement Regarding Plaintiffs' Attorneys' Fees

If they wish, Class members or their legal representatives may submit written comments to the Court supporting or objecting to the Unopposed Motion for Approval of Settlement Regarding Plaintiffs' Attorneys' Fees. No court hearing will be held. To submit written comments, Class members or their legal representatives must send or deliver a letter to the Court at the following address:

Mr. J.T. Noblin, Clerk
United States District Court for the
Southern District of Mississippi
United States Courthouse
245 East Capitol Street
Jackson, Mississippi 39201

In order to be considered by the Court, your letter must be received by no later than 4:00 p.m. on June 16, 2008. You must sign your letter, and must also print your name, address, and telephone number on the letter. Please reference the *Olivia Y.* case, Civil Action Number 3:04CV251LN.

Please also send copies of your letter to the following lawyers:

Shirim Nothenberg
Children's Rights
330 Seventh Ave., 4th Floor
New York, New York 10001

Rusty Fortenberry
Baker, Donelson, Bearman, Caldwell
& Berkowitz, PC
4268 I-55 North
Meadowbrook Office Park
Jackson, Mississippi 39211

PLEASE NOTE: THE UNOPPOSED MOTION REGARDING PLAINTIFFS' FEES REFERENCED HEREIN AND THIS OPPORTUNITY TO PROVIDE COMMENTS TO THE COURT DO NOT CONCERN ANY INDIVIDUAL CHILD'S CASE THAT IS PENDING IN THE MISSISSIPPI YOUTH COURTS. THIS OPPORTUNITY TO COMMENT CONCERNS ONLY THE PROPOSED PAYMENT OF \$4,863,557.50 TO PLAINTIFFS' ATTORNEYS FOR THEIR WORK PROSECUTING THIS CASE FROM 2002 THROUGH JANUARY 4, 2008.

PLAINTIFFS' ATTORNEYS MAY FROM TIME TO TIME IN THE FUTURE ASK THE DISTRICT JUDGE TO AWARD THEM ADDITIONAL FEES AND EXPENSES INCURRED ON BEHALF OF PLAINTIFFS IN THIS CASE FOR CONTINUED REPRESENTATION OF THE PLAINTIFF CLASS. ADDITIONAL NOTICE TO THE PLAINTIFF CLASS MAY NOT BE PROVIDED IN ADVANCE OF SUCH REQUESTS. IF YOU OBJECT TO PLAINTIFFS' ATTORNEYS BEING AWARDED ADDITIONAL FEES AND EXPENSES UNDER THESE CONDITIONS, YOU SHOULD FILE AN OBJECTION WITH THE COURT SO STATING.

This Notice Has Been Approved For Distribution By:

The Honorable Tom S. Lee
Senior Judge
United States District Court
Southern District of Mississippi